PRACTICE OF LAW IN NEW YORK CITY.

THE orator at the Langdell celebration in June last was a foreign lawyer. At once he claimed kin with his distinguished audience by reminding them of the wide sway which our common law holds over this earth, and how that law — despite merely local divergences — is to-day a leading unifying factor in the civilization of mankind. Certainly it is not amiss that a learned profession, at one time distinctively recognized as The Faculty, should thus contemplate its history and also its ultimate goal; and that every earnest, trained member of it should at the close of each day's work, however humdrum, resort to the consolation that even he may to some degree be helping our law to become in form a perfect logic and in substance truth.

It is necessary that a university should teach law thus, as a science, but the students who learn of it only in this academic mode may go to the bar over-persuaded that this sublimation has been definitely reached. It has not.

In New York City law schools are now the highway to the bar. Mere empirics, who used to come into — indeed constitute — the profession by "reading" in the office of some practitioner, are rarely found.

There are at the bar, and probably always will be, men of native aptitude, who, beginning as office boys or as stenographers with large law firms, absorb an inarticulate knowledge of law and of the rules for applying it, and so come into marked success. Such men are not numerous, and certainly are not to be blamed if they be more credit to themselves than to the profession.

The diffusion of wealth enables more men than ever to seek their professional degrees at highly endowed institutions, which can well afford to award diplomas only to such as meet a high standard of knowledge — largely self-won — by the scientific (historical) method.

The interest of those already in the profession is to keep down the number of fresh competitors by keeping up the standard of admission to practice. For twenty years our local bench has narrowly watched the law schools, and the tendency of authority here has been steadily to force a higher standard on those schools

where students are still mechanically prepared to become lawyers. So that our local bar tends to abound in members whose specific training fits them to be philosophic lawyers.

The schools which now teach law as it ought to be may hasten the day when only such law will be recognized and applied. Seven of the nine judges on the Supreme Bench of the United States are school-bred lawyers, three of the seven being from one school. It cannot be but that to some degree their early education may through their decisions color the law of the land.

In his oration, Sir Frederick Pollock expressed surprise, but pleasure, to be able to say that this REVIEW is a contribution of some consequence to the literature of academic law. But for all that, it may not be amiss for the younger readers to find the uniform erudition of these columns now giving way to an exhibition approximately fair and orderly, — of some of the existing circumstances which in New York City at least, seem to set the ideal of the profession hopelessly far off and to make anything like high purpose common to the local bar seem a mere pretence. The excuse for this exhibition is not merely that such existing circumstances seldom cheer the philosophic lawyer at any stage of his career, but that, on the whole, they bear most severely upon beginners at the law.

A surprisingly large fraction of the entire population of the United States dwells within a radius of twenty-five miles from our City Hall, and nearly every human being in that circle is directly or indirectly supported by rents or profits earned on Manhattan Island. Local commissions from boards of trade and legislatures in sister states have for years been vainly devising means that this or that port on our eastern coast might rival or surpass New York. But her natural advantages have not been argued away. As the chief gateway of commerce to a country vast, new, and rich, her commercial importance, her rapid growth in numbers and in wealth, great as they are, have really just begun.

Belief in this prevails. Led by it, men of every calling and variety of merit or purpose sacrifice easy provincial careers and throng here from all parts of the country. No domestic business enterprise, speculative or conservative, avoids our local markets or moneyed institutions. Every form of chartered combination, no matter what state authorizes it, by which individuals seek — just now with success — to absorb the power and profit in an

entire branch of trade, without competition and with the minimum of responsibility, chooses New York City as its real field of operations. Private wealth has become so common that a man worth only a million is mediocre, and a comparison of any one of our richest citizens with Crœsus would be odious. Our local law business — not necessarily litigated — keeps pace with this concentrated wealth and commerce. The law enacted by our legislature and declared by our courts to meet our local exigencies is so much and so varied that New York is among the greatest law states in the Union, if not the greatest.

Not reckoning the Federal, Surrogates, and criminal courts, our twenty-five (at times twenty-seven) judges of civil courts of record in New York City began business in October, 1895, with calendars aggregating nearly twenty thousand issues, at law and in equity, awaiting trial under the ministrations of a bar so crowded that we have one lawyer for somewhat less than every three hundred of the population. Besides this, there are all the cases on first appeal to the General Terms, and the vast business of *ex parte* and contested motions.

On an average this would give each member of our bar less than four pending litigations. As a matter of fact, some lawyers in lucrative practice pass long periods of time when they have no litigations at all. On the other hand, the calendars reveal some lawyers having a large proportion of the cases, who are in no wise conspicuous in the profession.

The bar generally could not be supported out of the litigated business. Its steady support comes from office or non-litigated work, and this is true in the long run even of those firms that practise heavily in the courts. This — but not this alone — should chill the untried youth who comes to us with a constitutional yearning for immediate forensic triumphs.

The crowd in the profession signifies more than mere members; nowadays this crowd has a higher average of training, ability, and purpose than ever before. Moreover, it counts many men who have all these qualities and independent means to boot; and who can cheerily bide the period when, as is jocosely said, they have no business, being young lawyers. All kinds of occupation here, professional or commercial, are so filled that a man mistakenly fitted for a given career finds little to hope for in change. But what activity shall he resort to, to keep off rust or melancholy?

The young lawyer of literary ability who in his days of light practice appears too conspicuously as a writer lessens his chances professionally. The financial returns from writing a law treatise, even one that is well received, are surprisingly small. The likelier result of such a book is that it may win the author a good salary with some prominent firm, or, if his youth is not too glaring, will bring him fees as counsel or brief-maker in his specialty.

The rural districts send some better-class lawyers to our legislature; but this city quite invariably uses for that purpose only the poorer stuff at our bar. At times — about once in a quarter of a century — there is an uprising of decent citizens against our corrupt municipal rule. Then young attorneys shine forth as reformers. But for them the success of Reform does little else than set their altruism in a strong light. The present Reform Mayor, in June last, found more than three hundred and fifty of them anxious to sit in the fourteen judicial places then at his disposal. Thus it appears that the competition of beginners *inter se* in the profession and in its collateral activities is now very strong. But though this is the mildest factor in the entire competition that exists here, the younger generation are undaunted. As Mr. Joseph H. Choate expressed it at the Langdell celebration, Mr. Carter will soon retire, and a thousand young men are coming to take his place.

Thus almost ideal opportunity will be offered to the merciless law of the survival of the fittest. New comers may take heart on learning that the best of our lawyers have come through hard — in some cases very hard — beginnings; that the best of our lawyers are and consistently have been lawyers simply, and attend to collateral matters of public concern merely as duties incident to their professional success; that merely by surviving, by continuing on hand at one's office, — not necessarily in mere idleness, — there is always a chance that business will begin; that business well done breeds business; and the strange fact that this city not only allures but she consumes. Old New Yorkers are a trivial minority of the population. Everybody of present consequence here, including the leaders at our bar, came from somewhere else. There are no hereditary or family law firms. The son of a distinguished dead or retired father may be brevetted into the firm merely for the name's sake. Very probably ninety per cent of the rank and file of the bar are immigrants to this city; and the concentration at this point is so strong that we regard even Brooklyn as provincial.

Many lawyers come to this city because they aspire to be simply

lawyers, whereas in the country districts they must be politicians to succeed as lawyers. Provincial lawyers, even if of distinguished success elsewhere, seem usually to feel a strange necessity to explain why they are not found at the metropolitan bar; yet the out-of-town feeling as to the city bar is so sensitive that a lawyer from this city, no matter how able or prominent, must exercise caution in caring personally for his client's rights before a rural jury. On the other hand, our metropolitan juries neither know nor care where lawyers hail from, and there are now at our bar several men who, after some years of uneventful provincial practice, were transplanted here to almost immediate distinguished success.

Immemorial lay prejudice against our profession must still be faced in New York City. Probably if Jack Cade were to appear here with his unholy purpose of killing off all the lawyers, his following would not be small, and would include some really successful litigants. People who know nothing, who know little, and who know much, meet on common ground in having their fling at our profession. The burden of this always is that any lawyer will maintain that black is white, or do much worse, for a fee. The laity forget that the lawyer is the client's reflection, his *alter ego*, and that our system of trial, however imperfect, is still the most perfect way known among men of determining a question of fact. The system would work perfectly if those who apply were perfect. Attorney and client are the terms of a relation. Human beings in all their variety of moral significance, when in need of a lawyer, match themselves up with lawyers of corresponding moral worth. Thus in this crowded centre the bar must be most heterogeneous in order to supply the demand of this morally much diversified litigating public, and a lawyer who has practised long enough to have his character known will finally have a clientage on the whole suiting that character. A layman may not know, and very rarely does know, a lawyer's merit *qua* lawyer, but the character or reputation of his legal adviser he may fairly estimate. Experience justifies the belief that, with few lamentable exceptions, where there is any difference in moral status between lawyer and client, the former is the better of the two. As a rule, the recording angel will do well to keep both eyes on each, and to prepare to weep in case the lawyer ever receives his client's money save under stress of necessity, or holds it from the client one minute longer than he must. He should not allow the client to order this otherwise.

The writer has known of instances in which clients have pro-

posed to young lawyers in this city elaborate schemes of knavery, without previous reason for the clients to believe that the lawyers would approve of such knavery. In one or two instances the young lawyer temporized in order to call in some brother lawyer that the scheme might be detailed before witnesses merely as an incredible curiosity. Probably there is not at the bar to-day an experienced member of honorable standing who has not had at the bidding of the laity a high-priced chance to depart secretly from his record.

Fate decrees that trouble and legal problems in a particular piece of law business are great just as the amount involved in that business is small. But despite this, the entire bulk of petty work being done for charity at any given time by our bar in this city would probably exceed the whole law business of many a county town. A few years ago a member of our bar found in his safe a bundle done up in an old red handkerchief. It had been left there by a person then several years dead, known to be eccentric, and believed to be needy. This lawyer discovered that it contained, in such form that he might have appropriated it and none been the wiser, a considerable fortune. He promptly hunted up the kin of the deceased owner, and handed this find over to them. His chosen calling had not contaminated him.

It is one of the hardships of practice here, that the bar is so extensive that no lawyer can be acquainted, even by reputation, with all of it, and on undertaking any new piece of business he must be prepared to meet the best or the worst the bar affords. If he meets a hundred new lawyers each year, he must have a practice of many years and great variety to meet the whole bar. If he encounters an example of the worst, he must not only attend to the merits of his client's case, but exercise other wisdom born only of experience, and not to be had at a law school.

That a lawyer's conduct should meet a high standard, everybody admits as an abstract proposition. The General Term of the Supreme Court and the Bar Association are nominally ready to maintain this. As a matter of fact, whoever tries to start this machinery to work to realize this principle in a given case has his labor for his pains.

The average character of our bar is high, perhaps was never more so; but the history of our bar from the days of the Tweed régime shows that it is quite impossible to say just what a man may not do and still practise in our courts.

Distinguished members of our bar have told the writer of cases in which there was proof positive for disbarment, but that the authorities, on having that proof set before them, continued passive. There are inquiries into professional behavior instituted by the court of its own motion, where justice halts because the aggrieved party cannot pay to take up the referee's report. As a rule, a proceeding to disbar is an incident to a hot litigation. The courts always strive to have the lawyers simply fight out their cases, and to keep them from fighting each other. Every disbarment would defeat this purpose; and, besides, our innumerable statutory penalties cover nearly every act that would justify striking a name from the roll of attorneys.

The bar is generous. An attorney who has made a single misstep may by his good conduct ward off even any reference to it. The Nemesis of hard professional misconduct, no matter of how brilliant parts the offender be, is simply malodorous repute. Knowledge of this spreads through bench, bar, and laity until all of his doings and sayings are taken as *prima facie* spurious.

On general principles, even our elective judiciary stands by the bar. Our local reports tell of a citizen of wealth who by his holographic will proclaimed his dislike of lawyers, and named a private tribunal by which disputes as to the construction and interpretation of his will might be settled. The Appellate Court declared this null, and excusably said that the testator, led by his marked dislike of the profession, carefully framed a will to defeat his own intent. A sweeping judgment on lawyers as a class will not do. Reason usually allows correct judgments only on this one or that one according to his own deserts. The real leaders of our bar are few. They form a coterie, and enjoy special privileges in open court. They are not necessarily to be found in our "big offices." The real strength of each man's grip on his position is his integrity and other people's faith in it; then come his learning and technical skill, and his fair, high-minded use of them. There are no men in the community whose conduct is more steadily tested by high exactions. As moral factors hereabouts, they are unexcelled by any men of any calling, and the position of each such leader is more honorable and more to be envied than any place on our bench, as at present constituted.

The line between civil and criminal practice is rigidly fixed. The vast majority of the profession knows little or nothing about the Criminal Codes, and not infrequently one meets a well informed

lawyer who knows only vaguely where the criminal courts are held. There are of course a very few notable exceptions to this. But, as a rule, a leading lawyer in civil practice as little thinks of defending a criminal as he thinks of filling the pulpit on Sunday in one of our large churches. Several men of high rank at the bar as trial lawyers have lately gone into the criminal courts on emergencies. In one instance the experimenter, as soon as his task was done, fell seriously ill. In others the distinguished novices admitted having been nervous and sleepless, and professed a distaste, if not an incapacity, for that branch of law. Bad as all of our court-rooms usually are, the criminal courts till just now have been so much worse that a strong stomach seemed a *sine qua non* for practising in them.

The entire bar now depends on the great libraries in the city for research. No law office pretends to have all the books it may need. The older lawyers have libraries too extensive to discard, and not full enough to be a sole dependence. The younger lawyers supply themselves simply with a few books on local practice, and digests of local reports.

Many local lawyers persist in the fallacy that law is not a business; that the profession must not become commercialized. Some such even refuse to have bill-heads, lest the law might thus be assimilated to mere ship-chandlery. Obviously there are other and better means than this of substantiating the dignity of the profession, and until these lawyers dispense with bills as well as bill-heads their humbug will be too plain to be harmful.

The philosophic lawyer haunts the studious cloister, and is intrinsically not a money-getter. In the long run, even in New York City, he is indispensable to the correct practice of the law, even by a money-getting firm. To every member of our local bar the might of the dollar is steadily, often painfully, present. Adam Smith declared that, "if lawyers were not paid, they would do even worse work than they do now." But as he reasoned *a priori*, the profession need not take his slur too much to heart, but may depend on the frank authority of one schooled by local experience. Such a member of our local bar, who had served professionally, but only incidentally, in procuring the franchise for running cars on Broadway, and who has also filled a judgeship in an important local court, declared under oath before our Senate Investigating Committee that it is impossible to practise law here "on wind." The discrimination of the witness between what is and what is not wind was justified by a charge of fifty thousand dollars.

The young man who to-day enters our profession hereabouts simply on his merits, to win its rewards beginning with a bare living for himself, must face competition at least as pitiless as any similarly equipped youth may find on starting into any trade or business on Manhattan Island. In fact, nothing in the "help advertisements" of our local newspapers for any kind of trained high-grade service quite parallels the offers of cheap work constantly made in our Law Journal by members of the bar bred at college and law school.

Members of our bar who have recently published books have informed the writer that there is no difficulty whatever in procuring men of well trained intellect to do the drudgery incident to such publications very cheaply, and that while the sober, steadfast, and demure of these stand by such work for beggarly pay, others of cheaper faculty and schooling make a break for independent business, and in some way get ahead.

The chasm between the tyro and the successful lawyer is enormous; it is made so, not so much by the legitimate differences of age, experience, learning, and ability, as by the older man's material accidents, largely capable of being expressed in dollars, — that is, well equipped and extensive offices at an annual rental of two to four dollars per square foot of floor surface, membership in prominent expensive clubs with long waiting lists, and similar advantages.

This showing persuades persons of a certain not rare quality of mind that to succeed at the bar it is needful to be spectacular. Young men of this species hire offices beyond their means, talk loudly in elevators and public places of representing influential clients and vast interests wholly imaginary; they announce their lack of time to take lunch, and if their antecedents are not too easily traceable such young men come before this community with engraved announcements that they are about "to resume" practice at the metropolitan bar. It may be that law makes one fussy, for Chaucer says his man of law was the busiest of men, and yet "seemed busier than he was."

Older men of this stripe make the local competition more factitious than ever, not only by grasping business and having obtained it by working out of it a fee from every point of view, but by utterly absorbing all the credit for work and professional skill, though such credit belongs to others kept in the shade. The writer has heard a man of this sort, a highly successful money-

making member of our bar, say that long ago he discovered that the more law he read, the less he knew; that it was merely business which a successful lawyer needs here; that the best of law is to be had cheap; and that the chances are that if Lord Mansfield were a young member of our bar to-day, he (the money-maker) would have him in his office at fifteen hundred dollars a year.

Clients select legal advisers, as lawyers select dentists, — largely on faith. To this, of course, there are exceptions, especially in the case of great corporations. The latter often select a lawyer with great nicety as to his merits as a lawyer. A corporation may have a lawyer selected with this nice discrimination in each locality where the corporate work is done, and, more than that, it often selects a lawyer with reference to his peculiar fitness for the special piece of work.

All clients, however, do appreciate that lawyers are legion, and that they work for pay. The day is at hand here when clients run from office to office to get their legal services done by the lowest bidder, and in this they are aided and abetted by many of the profession. This is particularly true in regard to actions for tort, proceedings to vacate assessments, and as to searching titles. In regard to torts, arrangements amounting to champerty and barratry are not uncommon, and in regard to searching titles such arrangements are made occasionally as have resulted in the lawyer having finally either to break his contract or to serve without pay and expend more for disbursements than the entire sum "to cover all" for which he had agreed to examine the title. Recently the writer discovered two men named executors in the will of a person just deceased, running from lawyer to lawyer to get the lowest bid for the entire legal service in settling the estate. The cause for their peculiar zeal was probably that they were the residuary legatees.

None of the law partnerships hereabouts savor of mutual insurance between the members, or are in any wise sentimental, albeit single members of such a firm may now and then write or speak in public as communists or socialists. The dividends or share of profits fit each member's personal value as rigorously as if the subject matter of the business were beef or wool. Many of the large law firms employ cashiers as in a mercantile house, and often a member of the firm is such distinctly as its bagman, its drummer-in of business.

There is no common mould for these men; law schools do not fit

them for their special activity. This one is prominent in politics, that one in the church, another gives club dinners to representative business men, all are kindly to reporters, all laboriously angle for fees; and it is not unheard of that clients employ such men's firms for the bold purpose of getting into relation with or near to a notability. In fact it is finally true that this bagman, however petty as a lawyer, is the distinctive mark of his firm, however excellent as lawyers his partners may be. Many law firms serve corporations or large commercial houses for a yearly stipend. If it be a firm in "mercantile practice" and a jobber or retail merchant comes to it to be put through insolvency, this firm may learn by telephone what, if anything, the bankrupt owes to the wholesale client, and may see that in some mode the wholesalers' debt is preferred; and thus the large commercial houses find it profitable to have such mercantile law firms under steady pay.

It is known that the law business of a corporation is procured and held by marked courtesies to the directors. That the counsel to a corporation should, during his retainer, support a poor relation of a director, is an actual instance of such courtesy, perhaps an extreme one. Manufacturers, fiercely competing for the heavy profits in some dress fabric for which a passing fashion may create an enormous demand, easily find allies at the bar to bring innumerable suits for infringement and injunction. It is never intended to try these suits. They are brought for advertisement, and to fluster small buyers. There are lawyers in this city who keep up steady relations with the reporters. When such a lawyer seeks foreign capital to vitalize a struggling mining corporation in Pennsylvania, the reporters loyally give out that he represents in Europe the vast interests of the Pennsylvania Coal Company. There are numerous others who fight their way to a steady incidental income out of costs from the endless motions with which they ingeniously harass an opponent as long as a litigation lasts. A brother lawyer told the writer of deliberately fighting his way thus into one hundred dollars a month steadily.

Recently, the writer received a luxuriously printed pamphlet, describing a banquet by a law firm, given freely, including wine and speeches, to numerous men of substance and influence likely or desirable to be attracted to a pending business adventure. Among the pointed sparkling responses was one by a member of this firm known to be an exemplar of what is called the "new and progressive methods and ideas." He proclaims that the distinc-

tion between the lawyer and the business man has vanished; that the lawyer is no longer the ill fed chap with a green bag snivelling for a fee, and constantly ridiculed in the older comedies; but that he is to-day the indispensable guide to the business man, and should constantly be in his client's counting-room or ready by telephone. This view of the relation enables the lawyer to say to his wealthy client, "Your trust in me is fully justified. Don't draw a long will showing your intentions in detail, but leave your accumulated treasure to me absolutely as residuary legatee; I will distribute your fortune after your death as you may secretly instruct me, or as you would if living have given it under my advice." In this view, too, the lawyer is transformed into the promoter and broker, and goes abroad as the agent of trusts. In fact, the largest item in some of the great charges made by lawyers in this city within the last ten years has been simply brokerage. Some lawyers abroad for foreign capital at the time the house of the Barings was shaken have been stranded there ever since, showing that the "new method" is not necessarily progressive.

Corporations furnish bonds and security needed in all manner of legal proceedings; they have long stood ready to be executors, trustees, and guardians, and are more and more made use of for those purposes; they have, as shown later in this article, about absorbed title-searching, and a few months ago the birth of a local corporation was announced to give legal advice by written opinions in answer to written inquiries, for two dollars and fifty cents apiece, postage included. This is an approximation to practising law "on wind" and the writer regrets he cannot report the result so far. Thirty years ago, the late John K. Potter alleged that to be a corporation was negligence *per se*. There has been a great reaction, and it is now negligence *per se* to attempt anything except under corporate guise. We may expect even to hear of corporations formed to furnish testimony, — if not indeed to testify on trial.

These existing circumstances, — and there are others, — lead to the conclusion that lawyers in New York seek a dollar for what it is worth, and that the law is a business by which it is growing harder to get dollars.

There are startling instances of financial success at the bar not really attributable to professional skill or service, though when this success appears law business multiplies. For instance, a quiet inconspicuous conveyancer may suddenly move into large costly offices with a horde of clerks, and have a bustling office

business, and also suits of the equity calendar involving all varieties of conflicting interests of holders of liens on real estate. Inquiry may disclose that he himself had or controlled some wealth, and came to his height by a shrewdly made "corner" in a certain quality of bricks which builders at the opening of their working season had to buy of him on his terms. This example is typical, and others could be given.

Within the last twenty years the local bar has endured a great loss of income in the matter of searching titles to real estate. Corporations formed for the business seem about to absorb it utterly. Twenty years more will tell the tale. The law of real estate, indigenous to our system, — English law *par excellence*, — is the special pride of the profession. Owing however to a series of crude, unsystematized statutes since early in this century, providing for a great variety of liens on file in a great number of places, no part of the law is so unpopular.

A conveyancer frequently meets with an abstract showing by the frequent changes of title in the last twenty-five years that at the ordinary lawyer's charge for each change (not counting price of official searches) the bar has received fees aggregating the present market price of the real estate involved. And even at that, the examination of a title in this city is at best only an approximation to correctness. No one is incapable of error, and mistakes are brought home to the best conveyancers, including the title companies. For instance, that a man in the line of grantors, recited as and on inquiry appearing to be a single man, should have after all by some form of marriage a wife who comes along inopportunely to claim her dower, is only one of the nightmares of the real estate lawyer. Yet our last legislature enacted that a wife should be *heir* to a share in her deceased husband's real estate. This spread such consternation in the profession that the law was repealed by the same session that enacted it.

In the leading law offices in this city one used to see posted a schedule of rates for examining titles, as fixed by the leading firms. These rates were then paid; but after the panic of 1873 this schedule was departed from, till now competition is so sharp that titles are sometimes examined at a loss to the conveyancer.

In New York City searches must yet be made in seven different public offices against every owner past and present of the land under examination for about two score sorts of liens. Lawyers used to have to delay their business, and to bide the pleasure of

the County Clerk and Register, for their very important official returns, or else pay extra for what were called accelerated searches. This disposition for extras on the slightest pretext, and even for direct tips, prevails throughout the County Court House and Register's Office. It abates somewhat when reform is in the air, but it is humored continually by the big law firms, who by virtue of it, as against the smaller firms or beginners, are a privileged class. The public records in the Register's Office are inestimably precious. The building and the conduct of the office, speaking calmly, have for years been disgraceful. The building has, as we hear, served formerly as a church and as a prison. It is an antiquated barrack, without proper light or ventilation anywhere, while in some of the murky ground-floor rooms the unsanitary plight suggests typhoid. The light and air grow worse, but the Health Department has lately somewhat suppressed the odors. The libers show various stages of dilapidation, and every species of handwriting. Bad inks have been used, and sometimes have wellnigh faded out. It has more than once been the privilege of the writer, on opening a liber, to see a beautiful specimen of the *cimex lectularius* transgress all the covenants in a full warranty deed, trespass upon the description of valuable real estate, and retire with an air of seisin and further assurance within the binding.

Theoretically, deeds and mortgages are recorded at once. In fact, the work always is months behind, and one seeking to inspect a recent deed will be told it is in Mickey Dooley's bundle on the top floor. When he approaches one of the numerous scriveners on this top floor it may prove to be Moses Polenski, who will tell him Mickey has just gone out and left his papers with O'Flaherty over there. The latter gentleman will, when spoken to, adjust his quid, and then say, "Dem dere is Mickey's papers. Yer kin find what yers want, and be sure to stick it back jist where yers gits it." A sensitive nature must not be shocked if, in addition to the above, this motley crew of copyists breaks forth in cat-calls and clumsily veiled personalities. But since this office has been visited by the Reform administration, the behavior of the scriveners has improved. In near-by Newark the deeds are well recorded by courteous, well-dressed women, who work silently in a secluded room, sunny, carpeted, and clean.

The legislature has required the block system of indexing in the Register's Office. If this is a step towards simplifying real estate records, it is the step that costs, for in four years it has

resulted in four thousand five hundred and fifty-four mistakes. Against this political and pot-house stewardship of our real estate records the title guaranty companies have risen up inch by inch; they have fought in the courts against the office-holders, actually beginning with a fight for the mere right to inspect the public records. Finally, at least two such companies have centralized a plant where in a few hours' time, and upon the most elementary suggestion of what is wanted, either company will furnish as to any particular piece of real estate information that must be sought in seven scattered public offices. Competition has made the work of these companies cheap and speedy to a degree that till lately would have seemed incredible. These companies moreover insure titles (better than a lawyer's certificate) and command capital to lend on mortgage. Although one company is distinctively known as the lawyers', yet the impression prevails that all of them tend to become mere business enterprises, excluding lawyers as a whole except as customers. The insurance companies here having "law departments," and the large firms having an extensive clientage of trustees, have accumulated a more or less imperfect real estate title plant, and their business in this kind will persist. But it seems no longer possible, as it was once, for a beginner to build up a title business, — at its full and best the most paying branch of the law.

The building in which the civil courts are held and their records kept is as unfit for their purpose as the Register's Office is for its use, and makes against the decent administration of justice. The recent death of a judge was attributed to the foul plight of the City Hall, and on account of that plight a fellow judge adjourned his court. The County Court House is chiefly famous as a monument of knavery. Why, it is asked, must we come with clean hands into a building, where Equity instinctively holds her nose? As a depository of records it was long ago insufficient, and is rapidly growing worse. The writer now has a real estate transaction indefinitely delayed because an indispensable record (so recent as February, 1890) cannot be found in our County Clerk's Office.

Present comment on local litigated business must be mostly historical, as the change which went into effect at the opening of this year removed an old state of things, and is now calling forth criticism, but has not yet told its own virtue. Three distinct courts, each with its own machinery complete, have been merged into one court, — the Supreme, with the supervision and patronage of all the parts for initial trial vested in an intermediate appel

late division. The first result of this was feeling — unjudicially ruffled — on account of disregarded prestige and loss of patronage. But a political boss may not find it easy now to keep here during the summer vacation any judge he may wish for the contingencies of a party fight in a political campaign.

It would be unreasonable to hope that the present new order will wholly obviate our local shortcomings in getting justice by trial. As in the days of Magna Charta, we are still experimenting for justice cheap and speedy. Each issue ready for trial must, according to the court it was lodged in, wait from one to two years before it is first called. The first call of some cases has been postponed by the new combined calendar. If the courts sat, as they ought, more hours in the day and more days in the year than at present, at least until arrears of business are despatched, the enormous expense of our judicial system would be less vain. When after the long delay a case is finally reached, it is tried under pressure for time. The writer has heard an honored judge at circuit tell distinguished counsel attempting to argue questions of evidence, "Gentlemen, it is near the end of the term; next Monday I begin to try cases elsewhere; I must rule at once, and this matter may be argued on appeal." Thus the cost of many of our local lawsuits would have been simply prohibitory to litigants in the days of King John. Some of the existing circumstances that make the outcome of a trial (especially by jury) in this city problematical are the expenses; the delay in being reached; the rush at the trial when reached; the multitude of judges; the vastness not only of the bar, but of this centre of population, whereby inscrutable relations and suppressed influences, by no means always designed, of attorneys, parties, witnesses, and jurors *inter se* may, however irrelevant, actually decide the case; and last, but not least, the Code of Civil Procedure.

Since 1848 we have had an attempt by our legislature to fix our civil practice by three thousand eight hundred and seventy paragraphs of statute all told, which for some years back have been amended on the average of eighty-five paragraphs a year. The cases in which the merits have been suspended that a question as to new practice — the meaning of some part of this Code — might be fought out before the courts at great delay and expense of the litigants, are myriad, and, though the reports of them fill many volumes, the pitfalls are not yet all known. The writer has known of an amendment to result from a letter

by a young lawyer of meagre experience to a friend in the legislature. The thousands of annotations to this Code can be safely used only by finding the exact wording of the section passed upon at the date of the case. But however often a section may be amended, all cases on it in its various stages follow it while it lasts. It is scarcely too much to say that an expert in our practice cannot be sure of knowing it over night. Older lawyers tired of this long ago. In cases where there are a multitude of counsel, it is not unusual, when a question under the code comes up, for the seniors to say, "Let the young men fight that out."

The writer has recently known of a litigation hotly contested to judgment, in which both the attorneys and judge knew nothing of a new section of the Code controlling the chief point in the case. Revision of all its Code is again imminent, but scientific codification is not in sight.

The multitude of judges before whom a case in its many phases may have to pass is a risk of litigation. To a degree, it is like handing around a kaleidoscope, and expecting each person to see the same figure in it. On the recent call of an equity case, the defence claimed that the wrong tribunal had been chosen, and demanded a jury. The judge held that the case was properly before him. As the term was far spent, the case went into the next term, and before a new judge. The motion was renewed, and this judge said there was an issue for a jury. It was cheaper to obey than to appeal, so the issue was proceeded with before a jury. Here the third judge on his own motion declared the matter wholly of equity jurisdiction, and sent it back to equity, where it was tried. All three of these judges have been on the bench for ten or more years. Many judges exchange courtesies to the detriment of litigants. There is now in our highest court an appeal involving under four hundred dollars on a question in which five judges have concurred; but the judge who wrote the last prevailing opinion allowed an appeal through courtesy to one judge, who dissented, but wrote no opinion.

Again, pettifoggers can profit by the number of judges. In vacation (June to October) Chambers is held by the same judge only a week or two at a time. A corporation is sued for refusing to transfer stock on its books. X. is counsel for the corporation, is the treasurer who refused to make the transfer, and also claims to be the legal owner of the stock in question. As counsel he advises himself as treasurer that the corporation has a good

defence on the merits, and swears to the necessary papers for an examination of the plaintiff to enable the corporation to plead, and to stay all other proceedings meanwhile. The plaintiff is a merchant on Union Square, and he is dragged down town once every ten days all summer, each time to face a new judge, till in September, the judge having an early engagement to go to Coney Island, summarily ends the farce. The pleading is never served, but the defendant promptly settles. Owing to the variety of mind on the bench, cases are nursed by counsel so as to avoid certain judges and to come before others. Nobody expects one kind of law from all the judges.

Calendar practice is a nuisance almost unmitigated. The issue when framed lies by from one to two years to be reached, and when first called it is usual to let it go over for two weeks. Setting down a case on the day calendar usually starts a period of fret, — the judges pulling the lawyers one way, the clients and witnesses clamorous to go to their affairs in the other. The writer has answered "ready" on a case at first once, and later twice, every court day from the beginning till the twenty-second of a month, and then the judge suddenly announced that he would take up no case to be two days in trial. This sent the case over to the next term, when it appeared at the end of a long calendar, but owing to a "break" was immediately tried. Lawyers cannot expect fair compensation for this ineffective fret. It makes litigation odious to the parties, and most witnesses unwilling.

To each of the twenty-two justices of the Supreme Court in this city, his judgeship came as an elevation in almost every sense, and that elevation proceeds as his services go on. Since the days of Tweed, local bosses and politicians have had some degree of awe for the bench, and even though they set upon it men degraded by heavy political assessment, they have still been men with the beginning of capacity. It is a public detriment for a judge to learn *all* of his law in the course of his office, but in this city the business is so enormous, so varied, and so quick, that a fresh judge must learn speedily or be swamped. If a justice on Supreme Court Chambers does well all that he seems to be doing when the rush before him is at its worst, Julius Cæsar might well ask to be retired as an exemplar of the power of effective divided attention. As a rule, the new judges develop rapidly to the good, and at their best belong to the public. The tradition grows that good service on the bench binds all parties to the re-election of a

good judge. The judges form a coterie, and generally all hold themselves aloof from public functions save in discharge of their office.

The subject matter of a legal contest rarely justifies all the words that are uttered about it. Stenography and type-writing are not allies of brevity. The written opinions of our judges are too many and too long. A justice in our Supreme Court was summarily deciding a contested question of practice, when the losing lawyer said, "But, your Honor, I have a decision the other way." "Of course you have," said the judge. "Anybody can find in the State conflicting decisions on a question of practice." Except at a jury trial, the lawyers are allowed to talk too much. If our judges would resent carefully and promptly the deliberate misstatements constantly made by lawyers on arguments, they would even by that do much to elevate the tone of the bar, to ease prac tice, and to save time.

The judges dispense patronage in the appointment of receivers and referees, at the rate of from eight to ten every day. In so doing they incur perhaps most of the criticism to which they are subjected. A reference to hear and determine should only be resorted to by rich and earnest litigants. It is on the whole the most expensive mode of trial, and the slowest, even when haste is especially sought. The stock company of referees is certainly very limited as compared with the whole bar; and one soon comes to see the tangible influence that brings this or that man into favor of this or that judge. The young briefless son of a powerful politician, of whose learning and ability litigants need never become rampant to avail themselves, is sometimes so favored by references as to carry a private court calendar at his office. It is reported that our Code originally almost reached final enactment, with the provision that a judge might refer an issue to not less than one attorney at law. But the legislature enacted the clause as it is, and did not encroach on the prerogatives of the Bench. Thus the judges are left full play to select as referees men from such as know enough to sign their names where the lawyers indicate, all the way to the most distinguished men on the roll. They do that so accurately that the name of each referee in the day's list tells fairly closely the quality and magnitude of the case assigned to him.

While the day has not yet come when a lawyer may go before every judge at the court and say, "Your Honor," with all the eloquence that simple truth inspires, yet no lawyer nor litigant now

need fear any unmerited harm from our local Supreme Bench, and, taken all in all, the present array is one of exceptional training and capacity, and reflcts credit on the scheme of popular election.

During the progress of the "Boodle Trials," a Supreme Court justice declared from the bench that he had long wondered why the bar put up with such men as were offered for jury service in that court. One result of those trials was improvement in the quality of juries. The experience in jury-getting at the trials consequent on the Lexow Investigation promises further improvement. But our best citizens, such as the bar would most gladly have on juries, evade that service in every possible way, and juries are not yet what they should be. Constantly ex-jurors volunteer such queer reasons for voting as they have on a given case, as to compel doubt whether trial by jury ever was the bulwark of Gothic liberty. The power of an astute learned judge at a jury trial is now a compensation for a poor jury. A judge with us may, and not infrequently does, estimate a case at the outset; he may baffle attempts to introduce error at the trial, and to a great degree and rightly steer the jury to a conclusion substantially just. Counsel who quarrel with a judge, proceeding thus, only help the tacit purpose of the judge. In nine cases out of ten, juries are not scrutinized, but under pressure of business are taken after one or two formal questions to the entire twelve, just as they are offered. The disaster that may lurk in this might often be avoided by slight questionings.

The writer, lately having a near-sighted opponent, tried a case before an exceptionally prepossessing jury. The court kept the case from the jury, and when it was discharged it was discovered that one of its best men, being a personal enemy of the near-sighted opponent, had been quietly waiting for him.

Not long ago one of our judges, at a trial by the husband against the wife for divorce, on our one statutory ground, asked who a couple chatting and laughing in the courtroom might be. He learned that they were the husband and wife, the latter defaulting on the serious charge against her. He called them before him, and she told him that she was guiltless of the wrong charged to her. Whereupon the matter became one of special inquiry.

Again, recently a reputable attorney, while waiting for his case to be reached in one court, sauntered into an adjoining room where a woman was being badly broken down on cross-examination by her own written testimony as to the same transaction

sworn to by her some years before. On re-direct examination, she detailed at length how that written testimony had been offered to her for two hundred and fifty dollars before the trial, and named this reputable attorney then in the room by accident simply as the man who offered it. She in fact did not know the reputable attorney; he had never seen her before, and the story was a fabrication. On sending up a card to the bench, the judge promptly let this attorney testify.

Again, different law firms may safely combine here in a protracted elaborate scheme of fraud. A retail merchant, for instance, suddenly and without obvious cause fails, either by a general assignment with preferences, or (the latest improved method) by simply delivering all his assets in parcels, under bills of sale, to various kith and kin in payment of alleged indebtedness to each. The wholesalers, who have just vied with one another to furnish the subject matter for this failure, seek redress by law, but they find the way has been from the outset blocked by attachments, replevins, confessed judgments, and receiverships, each proceeding being *prima facie* sound, and represented by some lawyer in apparently hot pursuit of the insolvent, but really in combination with this insolvent's legal representative. The security of the insolvent is thus so complete, that one of them so intrenched, lately under oath at the Court House, said, "Since my failure I have enjoyed perfect peace." Of all this fraud the wholesalers are certain, but the threadbare presumption of the insolvent's purity leaves them without legal resource, save to embalm this misplaced credit on our judgment docket, already in large part a monstrous exhibit of similar doings, which it seems are impossible under the laws of nations of Western Europe.

These are a few of the instances of the chicanery that may thrive here, and which no one would dare enter upon in provincial or sparsely settled communities, where everybody and his allies are known or can be quickly found out.

These instances mean that litigation here, more perhaps as to facts than as to law, is extra-hazardous, making results doubtful or mysterious to the timid. All that has gone before indicates that trials here call for peculiar firmness in the lawyer, — a firmness that comes, even to the man naturally endowed for court work, only by constant practice. As the horse that grades the track may not be the one to win the race, so an office lawyer of respectable learning and ability may be no match in a trial

against a man inferior to him as a general lawyer, but who tries cases nine months out of twelve. Trial lawyers who have been out of court practice here for several years shrink from returning to it. The man who tries cases nine months out of twelve here learns law. The distinction between attorney and counsel is now more marked than ever, and the number of lawyers who have counsel try their cases increases.

Young men on first coming to this city covet places in the big offices. Some such offices hire an additional room merely for such comers to sit in. The writer knew of such a room where these young men, nearly a score of them, and in excess of the available chairs, were licensed to exchange their items of information and speculative opinions uninterruptedly till nature took its course with each. There are a few successful lawyers who keep a hand out constantly for the best material of the leading law schools, and not only use it to keep the make-up of their firms in a constant state of flux, but send out from their office new firms of importance. Most of the members of heavy law firms dissuade young men from coming to them, and pray there may be a "close season" of at least three years on young lawyers. There are instances where the merit of new coming young men is impressive, in which prominent lawyers have generously bestirred themselves to procure beginnings with small firms for the tyros. There are instances too of young men coming into brilliant success and grand prizes by clinging to a big office, but these are a very small percentage of all who try for it. In some such cases men must submit to years of routine of such quality as watching the calendar. In fact, the writer once heard a keen counsel allege in open court, when his opponent's clerk was wanted but could not be found, "Oh, he can't come. My learned adversary keeps that man in his offce just to swear to affidavits all day long to meet the exigencies of his practice." The useful clerk in a large office must not flinch at having to argue in court legal propositions that his employers are hurried into, but which are obviously preposterous. Rivalry between aspirants in the same office is not always inspiriting and generous, but partakes of the nature of a suppressed family quarrel.

Sometimes a thoroughbred but anonymous lawyer maintains for years simply a salaried place with a heavy firm, and, lacking the knack to become part of it, faces the cold world when his own blood is no longer of full warmth. Usually after a year

this person is seeking a salary again. Clients seem to incline against one who has for years persisted in drowning himself in a tumbler. They like those who try for themselves young. A short term of service in the office of a busy practitioner is no doubt useful; but, taking the bar as a whole, the largest percentage of cases in which a fair success has been made is of those who strive early in life for professional identity. "To be thrown upon one's own resources is to be cast into the lap of luxury," Franklin asserts. This no doubt means when the chief resource is youth.

The student just leaving the law school may guess from such commonplace existing circumstances as have been here set forth how widely our local practice of law differs from his school duties of evolving the eternal verities out of printed statements of fact in selected cases under the kindly guidance of a professor. Such student will quickly foresee how he must soon face the dilemma, "Shall I be intrinsically the lawyer (like Lord Mansfield) at the risk of only fifteen hundred dollars a year, or shall I refuse to quarrel with my bread and butter, and make my success conspicuous by unlimited creature comforts?" This question each man must settle for himself. Those who decide in favor of bread and butter uniformly shift upon fate all responsibility for their choice.

Any law school worthy the name develops in her sons an incapacity to choose any but the lawyer's side of this dilemma, and in that alone inclines men to the ways of pleasantness and peace. This article is not pessimistic, but it does not favor the so-called new but really destructive methods. The lawyer, thoroughbred and conservative, who seeks to find the facts as they are immutable and apply to them frankly the law as it is, who avoids the meretricious risk and incidents of public trial, still exists.

The amount of good such lawyers do, unheard of, is enormous. The service such a lawyer renders his client is of great intrinsic value; it is suitably rewarded. The relation of attorney and client in this light, and not as a conspiracy to do all that self-interest may prompt, and which by defect of laws is not yet a state-prison offence, may still be found, and merits all that has been eloquently said of it.

The careers of the present leaders of our bar teach nothing with greater certainty than that

"Fearless virtue bringeth boundless gain."

Thomas Fenton Taylor.